

ADMINISTRATION TEAM MINUTES

Date: June 16, 2006
Time: 9:00 am
Place: Tacoma AGC Building

<u>Attending</u>	Mark Borton	<u>✓</u>	David Mariman	<u>✓</u>	Mark Rohde	<u>✓</u>
	Jerry Brais	<u>—</u>	Craig McDaniel	<u>✓</u>	Glenn Schneider	<u>✓</u>
	Forrest Dill	<u>—</u>	Tina Nelson	<u>✓</u>	Mark Scoccolo	<u>✓</u>
	Paul Gonseth	<u>—</u>	Cathy Nicholas	<u>✓</u>	Joe Spink	<u>—</u>
	Tim Hayner	<u>✓</u>	Ken Olson	<u>✓</u>	Dave Standahl	<u>—</u>
	David Jones	<u>✓</u>	Roger Palfenier	<u>—</u>	Greg Waugh	<u>✓</u>

Opening comments - Safety

Craig opened the meeting with a discussion on safety. The WSDOT Secretary of Transportation has been greatly impressed by contractor safety programs. This will result in a heightened safety awareness that is visible on all WSDOT projects. The Department has a lot of new employees and a heavy workload, which could increase the risk of accidents.

WSDOT has scheduled a “safety stand down” on July 10th. Critical personnel will not be affected and there should be no impacts to current projects caused by WSDOT staff participating in this event. This does not affect contract requirements, but is specific to the Departments internal safety program.

A general discussion of project safety followed. Will the focus on safety result in changes to how we design our projects? Some have had bad experiences with traffic designs relating to delineation and speed reductions. An accident in the Vancouver area resulted in a speed reduction in a work zone that was not a part of the design. But speed reductions alone are not a cure-all, WSP presence is required for speed reductions to be effective. The Work Zone Safety Task Force exists specifically for the purpose of addressing these types of concerns. Regional differences exist in today’s WSDOT safety strategy. It seems that some regions will design temporary concrete barrier into nearly every project for worker/motorist protection, while some regions almost never include temporary barrier. Some feel that safety precautions like temporary barrier should never be considered a “contractor convenience.”

Will there ever be a safety bid item or force account payment for safety? Contractors already know that investing in safety always pays you back. Can reducing exposure qualify as a Cost Reduction Incentive Proposal (CRIP)? Reducing lane closures, reducing contract duration, and reducing exposure to risk may all have hard costs that can be quantified. However, fair bidding practices must always be maintained. Radical changes that alter the how the work is to be performed (changing day work to night, adding temp barrier, etc.) may amount to a Cardinal Change.

Some expressed concerns that WSDOT will overreact with excessive requirements for safety submittals and safety plans. It was noted that Oregon DOT approaches this with an appropriate level of effort, requiring monthly safety committee meetings that both ODOT and contractors staff attend. Although safety is typically the contractors risk and cost, a team approach to safety is preferred. Some contractor members have observed that good ideas to improve project safety may be proposed, but when it comes to paying more for these ideas, Owners are not willing. It often boils down to dollars, and it is hard to calculate a benefit for those extra costs.

Old Business – Section 1-08.5 Time for Completion (critical work prohibited)

Since recent changes to section 1-08.5 removed “other reason beyond the contractors’ control” as a reason for granting an unworkable day, we need a method of addressing contract time when critical work is prohibited by the contract. The proposed solution is a new GSP (attached) that expands the definition of a nonworking day to address this condition. It is paired with another new GSP (attached) that standardizes existing region provisions for Lane Restrictions. The Team voted to approve both provisions, and was eager to see them appear in contracts right away. The new GSP’s will be published with the August 7 package of Amendments to the Standard Specifications.

Old Business – GPS Controlled Equipment

The discussion on this item will be deferred to a later meeting. Many contractors are using automatic machine controls on their equipment. Large earthwork jobs present the best opportunity for application. However, a Digital Terrain Model (DTM) is required, and the outcome is only as good as the input data. Are our contracts ready to incorporate this evolving technology? Perhaps the input of our Computer Aided Engineering (CAE) office, or other technical experts, is needed.

Old Business - Retainage

Michigan DOT (MDOT) has eliminated their retainage provisions for a one-year evaluation period. It is proposed that WSDOT evaluate this for future contracts.

The discussion began with a realization that this may be a legislative issue. Washington State law requires that WSDOT withhold retainage. It also allows a reduction of retainage. WSDOT contracts require prime contractors to release retainage to subcontractors in Section 1-08.1(1). Is there a reason WSDOT cannot release retainage equal to the amount of subcontractor work completed? Various states and the feds allow

a reduction in the amount of retainage, but WSDOT does not – although the law does permit it.

What does retainage cover that the performance bond does not cover? Labor and Industries wants retainage for protection against tax underpayment and liens. It is easier than going after the bonding company. But contractors can bond the retainage, so what's the difference? Many local agencies will not accept a bond. ODOT specs provide for partial acceptance and release of some retainage, and may be an example worth following. WSDOT does not grant partial acceptance, so the contractor must continue to finance the retainage for the full contract amount. Tying release of retainage to receipt of Affidavit of Wages Paid could reduce the risk to the Department.

The Team agreed to continue this discussion at a future meeting, and to bring the technical experts along for the discussion. The e-mail message regarding MDOT's change in policy that started this discussion will be distributed to all (see attached).

Old Business – Partnering

The AGC/WSDOT Lead Team recently had a discussion on partnering. Their observation is that partnering used to be a part of our culture, but it has deteriorated and WSDOT has lost the bulk of our partnering experience.

There is a movement afoot to revive our partnering efforts. But what shape should it take? Jen Brown is taking a look at our program, and Craig is looking for input. Was what we used to do good? Did it work? What is the best tool to provide? How should it be done (informal, facilitated, Region Engineer led)?

There have been some after the fact applications. The Tacoma Narrows Bridge project used "high performance team building" and entire project team saw it happen – so it had a positive influence. Disputes Review Boards are a form of partnering in repairing relationships and getting beyond issues, and can serve as a sounding board and advisory committee. The preconstruction meeting is the beginning of the partnering relationship. "Pre-job coordination meetings" that include subcontractors may be a good way to get the ball rolling.

Good communication is the key to success. Partnering does not change the contract. Resolving issues at the lowest level is critical, because when issues are elevated things only get worse. Government bureaucracy complicates the reluctance to make decisions. WSDOT needs to be an attractive owner in order to enhance competition and get better prices, and contractors need to know how the owner will behave.

Craig will gather input from the Regions on how future partnering should take place.

Miscellaneous Business – "Round-Tuit" list

The Team cleaned up the list, deleting the items for “Tort Claims Liability/Accident Reports,” since this was the subject of a spec change, and “Materials on Hand provisions” since this has been included in the Construction Manual (see attached excerpt of the Manual).

The item for a Standing DRB is still of interest. A specification change would be required to make it happen. Idaho has one for each district, and John Gates at ITD would be a good contact for information. The Team agreed this will be an agenda item for next year.

Future Meetings

Friday, September 15.

The meeting adjourned at 12:00 noon.

Subject Area	Sponsor
Section 1-08.6 Suspension of Work	Dave Jones
Section 1-08.7 Maintenance During Suspension	Joe Spink
Review, Summarize Region Specials	Craig McDaniel

Team’s “Round Tuit” List

1. Bid Item for On-site Overhead
2. Standing Disputes Review Boards
3. Joint Training—Documentation
4. Payroll, Wage Administration procedures
5. Web-Based Construction Management

07023015.FR1 Lane Closure Restrictions
August 7, 2006

Use in projects where traffic volumes require that lane closures are restricted. Must use with 08054.FR1.

(1 Fill-in) Fill-in describes the specific facility or location and the hours that closures are allowed.

Section 1-07.23(1) is supplemented with the following:

Lane closures are subject to the following restrictions:

\$1\$

If the Engineer determines the permitted closure hours adversely affect traffic, the Engineer may adjust the hours accordingly. The Engineer will notify the Contractor in writing of any change in the closure hours.

No lane closures will be allowed on a holiday or holiday weekend, or after 12:00 PM (noon) on a day prior to a holiday or holiday weekend. Holidays that occur on Friday, Saturday, Sunday or Monday are considered a holiday weekend.

08054.FR1 Restrictions to Critical Work
August 7, 2006

Use in projects that contain 08054.FR1, and when the contract specifically prohibits critical work from being performed.

The first paragraph of Section 1-08.5 is revised to read:

The Contractor shall complete all physical contract work within the number of “working days” stated in the Contract Provisions or as extended by the Engineer in accordance with Section 1-08.8. Every day will be counted as a “working day” unless it is a nonworking day or an Engineer determined unworkable day. A nonworking day is defined as a Saturday, a Sunday, a whole or half day on which the contract specifically suspends prohibits work on the critical path of the Contractor’s approved progress schedule, or one of these holidays: January 1, the third Monday of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. When any of these holidays fall on a Sunday, the following Monday shall be counted a nonworking day. When the holiday falls on a Saturday, the preceding Friday shall be counted a nonworking day. The days between December 25 and January 1 will be classified as nonworking days.

08092.FR1 Interim Completion Liquidated Damages
August 7, 2006

Use in projects where an interim completion time is desired (such as the completion of a stage of work, lane closure, or ITS disruption), and the Region determines that user costs for failure to complete the specified portion of work, as calculated by the Transportation Data Office, are significant enough to warrant liquidated damages. Determination of the liquidated damage amount must adhere to Chapter 750.11 of the Plans Prep Manual. (6 fill-ins) \$1\$ describes the work to be completed; \$2\$ is the user cost; \$3\$ and \$4\$ is the unit of time (minutes, hours or days); \$5\$ is the smallest increment of time that will be measured; and \$6\$ is the contract provision that specifies the completion time.

Section 1-08.9 is supplemented with the following:

Delayed completion of ***\$1\$*** will result in impacts to the traveling public, increase fuel consumption, increase vehicle operating costs, increase pollution, and cause other inconveniences and harm far in excess of those resulting from delay of most projects.

Accordingly, the Contractor agrees:

1. To pay ***\$2\$*** liquidated damages per ***\$3\$*** for each ***\$4\$*** prorated to the nearest ***\$5\$*** that the work is not completed as specified in ***\$6\$***.
2. To authorize the Engineer to deduct these liquidated damages from any money due or coming due the Contractor.

From: Mariman, Dave
Sent: Thursday, September 07, 2006 11:58 AM
To: Mariman, Dave
Subject: FW: Mdot Eliminates Retainage Requirement

From: Mark Scoccolo [mailto:Mark@sciinfrastructure.com]
Sent: Monday, June 05, 2006 12:36 PM
To: McDaniel, Craig
Cc: Waugh, Greg
Subject: Mdot Eliminates Retainage Requirement

Craig: You may find this interesting. We spoke about this issue with Ron Howard before he left and he advocated a "No Retainage" policy. I would like to discuss this item on June 16th if possible. Your thoughts would be appreciated.

From Michigan Contractor and Builder, an Associated Construction Publications title

Mdot Eliminates Retainage Requirement

By Aram Kalousdian, Editor -- 5/27/2006

The Michigan Department of Transportation (MDOT) has eliminated its retainage requirement on construction projects.

The 1999 Disadvantaged Business Enterprise (DBE) federal regulations required prime contractors to promptly pay retainage to subcontractors after their work was satisfactorily completed.

Prime contractors argued that the requirement to pay the subcontractors in full before receiving retainage from states created a financial burden for them. As a result, the Federal Highway Administration (FHWA) revised the Code of Federal Regulations (CFR) to provide recipients of federal funds with three options to meet the provisions of Part 26.29 of 49 CFR, and address the prime contractors' concerns.

MDOT established a team to review the proposed options to identify the advantages and disadvantages of each option, and recommend which should be adopted. The team was comprised of representatives from

MDOT, industry associations, prime contractors and subcontractors, as well as FHWA.

Based on the team's recommendation, MDOT adopted one of the CFR options that eliminates holding retainage from prime contractors and prohibits holding retainage from subcontractors.

The new policy became effective January 1, and MDOT announced that it would maintain the policy for one year on all projects as a pilot. At that point it will be re-evaluated to determine whether or not it should become permanent.

"What are the consequences of this policy? Well, MDOT and prime contractors would be concerned about keeping contractors engaged on the project. However, we represent prime contractors and subcontractors and we approach this from a pro-business angle," Glenn Bukoski, of the Michigan Infrastructure & Transportation Association (MITA), said at the association's recent Super Conference in Sterling Heights.

"This actually puts money back into the hands of the contractors. That's pay for materials and pay for labor back into the economy. We have taken the approach that zero retainage is good for our industry. There are issues that need to be resolved such as punch list items; however, there was a general feeling that those issues would work themselves out."

Jim Urban and Eric Fleissland, attorneys with Butzel Long, gave a presentation on construction claims and changes at the Super Conference.

"The process starts when you recognize that you have a problem on a project. Project managers, field superintendents and foremen are key, because when changes are happening on a construction project, they

are the first ones to know about it. Recognizing that you have a compensable change on the job is the key to protecting yourself. It's the key to recovering the compensation for building a job that's different from the one you bid on," Urban said.

"If you've got a good engineer on the job and you get to the engineer quickly, you should be able to work the change out on the job."

Urban said that there must be communication between the field and the estimating departments on the front-end of the job and while the job is being constructed.

The change process starts when a project is bid on. Contractors should never bid only on the technical specifications. That only tells a contractor what they are going to build. The general and supplemental conditions in the proposal will tell a contractor how, when and if a contractor is going to get paid for the project.

Urban said that when a contractor has a question at the pre-bid stage, it should be submitted in writing, so that information exchanges are documented prior to the bidding.

"You have a duty to raise questions with the owner about the project. If you get the typical response, which is 'bid it as you see it,' then you have fulfilled your duty by raising the questions. As long as your interpretation and the ambiguity are reasonable, then you've shifted the responsibility back to the engineer by raising the questions, and if they don't answer them, then they assume the risk of the ambiguity being interpreted differently under the contract," Fleissland said.

Urban said that contractors should always attend pre-bid meetings. This provides the contractor with the opportunity to ask the engineer and/or owner questions

about things that are not clear in the contract. This will go into the pre-bid meeting minutes, and once that gets into the pre-bid meeting minutes that are officially issued, it becomes binding on the owner.

The contractor should set the agenda at the pre-construction meeting. The contractor should revisit coordination on the project, interference and permit issues, staking time, testing time, shop drawing time, and submittal of schedules. Administrative ground rules should be confirmed and problem areas should be identified.

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1-3.1B Progress Estimates

Progress estimates are normally processed on the 5th of the month for odd numbered contracts and on the 20th of the month for even numbered contracts. Where the Project Engineer deems it appropriate, estimates may also be run on other dates.

Estimates may also be run on other dates if the progress estimate or parts of the progress estimate were withheld to encourage compliance with some provision of the contract and the Contractor resolves the issue that caused the withholding. These estimates should be paid immediately upon resolution by the Contractor.

Within the CAPS system, the basis for making any estimate payment is information from the project ledger. Every entry in the ledger is marked by the computer as either paid, deferred, or eligible for payment. Before an estimate can be paid, a Ledger Pre-Estimate Report (RAKD300C-PE) must be produced. In constructing this report, the CAPS system gathers all the ledger entries that are identified as eligible for payment, prints them on the report summarized by item, and shows the total amount completed to date for that item but not yet paid for by progress estimate. The report also shows any deferred entries or exceptions if they exist and includes a signature block for the Project Engineer's approval.

If there are errors or omissions in this report, the ledger must be changed to reflect the correct data. After corrections are made, the Ledger Pre-Estimate Report must be run again in order to get the corrections into the report and made available for payment by progress estimate. Once the Ledger Pre-Estimate Report is correct, an actual estimate can be paid. The report containing the Project Engineer's signature should be retained in the project files.

The estimate process is then accomplished with a few keystrokes in option 2, estimate payments, in the CAPS main menu. At this point, the CAPS system will automatically calculate mobilization, retainage, and the sales tax. The warrant will be produced, signed, and sent to the Contractor along with the Contract Estimate Payment Advice Report and two different sales tax summary reports. Copies of these reports will also be sent to the Project Office. When the Project Office receives their copy of the Contract Estimate Payment Advice Report, the total amount paid for contract items should be checked against the Pre-Estimate Report. This helps to verify that the amount paid was what the Project Engineer intended to pay. In addition, the ledger records that produced the estimate will now be marked by the CAPS system as being paid.

Up to the point of actually producing the warrant, the entire process for making a progress estimate payment is initiated and controlled by the Project Office.

Particular attention should be given to the comparison of the plan quantities and the estimate quantities for the various groups on the project as shown on the Ledger Pre-Estimate Report. Overpayments on intermediate progress estimates are sometimes difficult to resolve with the Contractor at the conclusion of the project.

New groups which do not change the termini of the original contract or changes in groups should be accomplished by memorandum from the Region to the State Accounting Services Office.

An additional estimate may be prepared if considerable work has been done between the date of the last progress estimate and the date of physical completion when the Engineer anticipates delays in preparing the final estimate. Should this circumstance occur, the additional estimate should show the work done to date no later than the day before the date of physical completion.

1-3.1B(1) Payment for Material on Hand

Payment for material on hand (MOH) may be considered for materials intended to be incorporated into the permanent work. The requirements for payment of MOH are noted in Section 1-09.8 of the *Standard Specifications*. Payments for MOH are made under the 900 series of item numbers as ledger entries and need to be backed out as items are utilized such that 900 series entries are zeroed at close out of the contract. Therefore logically payment for MOH shall not exceed the value of the corresponding bid item. It is the responsibility of the project engineer to devise procedures that assure this is done correctly.

Payments may be made provided the contractor submits documentation verifying the amounts requested, the materials meet the requirements of the contract and the materials are delivered to a specified storage site or stored at the suppliers/fabricators as approved by the project engineer. Materials shall be segregated, identified and reserved for use on a specific contract or project. Payments commensurate with the percentage of completion may be paid for partially fabricated items.

All materials paid for as MOH must be readily available for inspection by the owner. Steel materials must be available for inspection but this availability need not be immediate. Reasonable notice should be given to allow the contractor to locate and make the material available for inspection. The project engineer may accept a higher level of risk that steel material may not be reserved for our use. The contractor's obligation to perform the work and the surety's guarantee of this obligation serve to offset the risk that reserved materials are diverted to other projects.

When materials paid for as MOH are stored in areas outside the general area the region shall make arrangements for inspection as deemed necessary prior to making payment. The region may utilize other regions or the State Materials Laboratory in doing so.

When contracts are estimated to cost more than \$2 million and require more than 120 working days to complete, a General Special Provision (GSP) will be included in the contract provisions, requiring documentation from the contractor as the basis for MOH payments and deductions. When this GSP is included in the contract provisions, the following procedure is used to determine how much of the MOH payment should be deducted from an estimate:

- Each month, no later than the estimate due date, the contractor will submit a document and the necessary backup to the Project Engineer that clearly states:
 - The dollar amount previously paid for MOH,
 - The dollar amount of the previously paid MOH incorporated into the various work items during the month, and
 - The dollar amount that should continue to be retained in MOH items.

If work is performed on the items and the contractor does not submit a document, all previous associated MOH payments may be deducted on the next progress estimate.

1-3.1B(2) Payment for Falsework

On those projects which include a lump sum item for bridge superstructure, payment may be made on request by the Contractor for falsework as a prorated percentage of the lump sum item as the work is accomplished. The Project Engineer may require the Contractor to furnish a breakdown of the costs to substantiate falsework costs. For any given payment request, the Contractor may be required to furnish invoices for materials used and substantiation for equipment and labor costs.

1-3.1B(3) Payment for Shoring or Extra Excavation

When Shoring or Extra Excavation Class A is included as a bid item, payment must be made as the work under the bid item is accomplished, the same as for any other lump sum bid item. When Shoring or Extra Excavation Class B is included as a bid item, measurement and payment shall be made in accordance with Sections 2-09.4 and 2-09.5 of the Standard Specifications. RCW 39.04 provides that the costs of trench safety systems shall not be considered as incidental to any other contract item, and any attempt to include the trench safety systems as an incidental cost is prohibited. Accordingly, when no bid item is provided for either Shoring or Extra Excavation Class A or Shoring or Extra Excavation Class B and the Engineer deems that work to be necessary, payment will be made in accordance with Section 1-04.4 of the *Standard Specifications*.

1-3.1B(4) Payment for Surplus Processed Material

When excess aggregate is produced by the Contractor from a WSDOT furnished source, the Contractor will be reimbursed actual production costs if the excess materials meet the requirements of Section 1-09.10 of the *Standard Specifications*. If more than one type of aggregate is involved, the provisions of Section 1-09.10 apply to each type.

If WSDOT has a need for the excess aggregate for either maintenance or future construction contracts, the material may be purchased into the appropriate inventory account. The Project Engineer should contact Region Maintenance and Accounting for guidance. If aggregates are to be disposed of as surplus, the Project Engineer should contact the State Administrative Services Office, Purchasing and Inventory Section, for additional assistance.

1-3.1B(5) Liquidated Damages

Liquidated Damages and Direct Engineering, or other related charges, are to be addressed as described in the contract specifications, Section 1-08.9 of the *Standard Specifications*, and Chapter 1-2.5G of this manual. Direct Engineering charges are a form of Liquidated Damages and must be listed on the monthly progress estimates on the line for Liquidated Damages. Traffic related damages as described in Chapter 1-2.5G(2) of this manual are to be listed under Miscellaneous Deductions. The Project Engineer must evaluate potential Liquidated Damages that have accrued as a result of the expiration of contract time before the damages are withheld from moneys due the Contractor. The work and circumstances that have occurred over the course of the project should be reviewed to determine if there is potential entitlement for granting additional contract time. Liquidated Damages that have accrued should be adjusted for this evaluation. Liquidated Damages deemed chargeable should then be withheld from moneys due the Contractor each monthly progress estimate as Liquidated Damages accrue. While the Project Engineer takes the action to withhold damages as the work progresses, only the State Construction Office may actually assess those damages.

1-3.1B(6) Credits

Dollar amounts may be deducted as a "Below The Line Miscellaneous Deduction" from progress or final estimates when WSDOT is due a credit from the Contractor. Routine credits from the Contractor to WSDOT include, but are not limited to, the following items:

- Engineering labor costs when due to Contractor error or negligence, additional engineering time is required to correct a problem. This includes the costs of any necessary replacement of stakes and marks which are carelessly or willfully destroyed or damaged by the Contractor's operation.
- Lost and/or damaged construction signs furnished to the Contractor by WSDOT. The Contractor should be given the opportunity to return the signs or replace them in kind prior to making the deductions.
- Assessment to WSDOT from a third party that is the result of the Contractor's operations causing damage to a third party, for example, damage to a city fire plug. Actual costs will be deducted from the estimate.
- Other work by WSDOT forces or WSDOT materials when the Contractor cannot or will not repair damages that are the responsibility of the Contractor under the contract.
- Liquidated damages not associated with contract time, i.e., ramp closures, lane closures (see Chapter 1-2.5G).
- As provided for in the specifications, specific costs or credits owed WSDOT for unsuccessful contractor challenged samples and testing.

The authority to withhold and assess routine "Below The Line Miscellaneous Deduction" on progress and final estimates has been delegated to the Regional Construction Manager, and may be further subdelegated to the Project